

Rule 8, Ariz. R. Crim. P.

SPEEDY TRIAL — When speedy trial rights attach — Revised 11/2009

Rule 8.2. Time limits, provides:

a. General. Subject to the provisions of Rule 8.4, every person against whom an indictment, information or complaint is filed shall be tried by the court having jurisdiction of the offense within the following time periods:

(1) Defendants in Custody. 150 days from arraignment if the person is held in custody, except as provided in subsection (a), paragraph (3) of this section.

(2) Defendants Released From Custody. 180 days from arraignment if the person is released under Rule 7, except as provided in subsection (a), paragraph (3) of this section.

(3) Complex Cases. One year from arraignment for cases in which the indictment, information or complaint is filed between December 1, 2002 and December 1, 2005, and for subsequent cases 270 days from arraignment if the person is charged with any of the following:

- (i) 1st Degree Murder, except as provided in paragraph (a)(4) of this rule,
- (ii) Offenses that will require the court to consider evidence obtained as the result of an order permitting the interception of wire, electronic or oral communication,
- (iii) Any complex cases as determined by a written factual finding by the court.

For cases filed before December 1, 2002, Rule 8.2(a) provided:

All Defendants. Every person against whom an indictment, information or complaint is filed shall be tried by the court having jurisdiction of the offense within 150 days of the arrest or service of summons under Rule 3.1 except for those excluded periods set forth in Rule 8.4 below.

A defendant's speedy trial rights under Rule 8 attach when the defendant is held to answer for the charge. In *State v. Medina*, 190 Ariz. 418, 949 P.2d 507 (App. 1997), the defendant was arrested for DUI in November 1993 and released on his own recognizance without any charges being filed. In March 1994, a complaint was filed against the defendant, but an attempt at service was unsuccessful. The court issued a

warrant for the defendant's arrest, and he was arrested on the warrant in January 1996. In February 1996, the defendant waived his right to a preliminary hearing and was held to answer on the charge. He then moved to dismiss the charges, arguing that he was denied his speedy trial rights under Rule 8, Ariz. R. Crim. P. He reasoned that under Rule 8.2(a), Ariz. R. Crim. P., the 150-day period began to run in November 1993, when he was originally arrested, so the 150-day time limit had run before he was rearrested on the warrant. The trial judge dismissed the charges and the State appealed. The Court of Appeals reversed, stating:

[Dismissing the case for a Rule 8 violation] was a mistake because the Defendant's right to a speedy trial did not attach until February 7, 1996, which is the date the Defendant was held to answer on the charge. The trial judge should have treated this as a case of pre-indictment delay and analyzed the motion to dismiss under the test of *United States v. Marion*, 404 U.S. 307(1971). Had he done so, for reasons that we will explain later, he could not, on this record, have dismissed the charges.

A person's Sixth Amendment right to a speedy trial does not attach until an indictment has been returned or a complaint has been filed and a magistrate has found that probable cause exists to hold the person to answer before the superior court. This is well established law in Arizona.

State v. Medina, 190 Ariz. 418, 420, 949 P.2d 507, 509 (App. 1997) [footnote omitted].

Similarly, in *State v. Lemming*, 188 Ariz. 459, 461, 937 P.2d 381, 383 (App. 1997), the defendant also argued that his right to a speedy trial attached when he was arrested and released with no charges filed. The trial judge dismissed the case, finding that the defendant's speedy trial rights had been violated. The State appealed, arguing that the "arrest date" referred to in Rule 8.2(a) does not occur until a defendant is arrested pursuant to a warrant issued under Rule 3.1, which does not occur until a defendant is charged by complaint, indictment, or information. Therefore, the State

argued, the applicable speedy trial limitation was "within 120 days from the date of the [defendant's] initial appearance before a magistrate on the complaint, indictment or information, or within 90 days from the date of [his] arraignment before the trial court, whichever is the greater" (under former Rule 8.2(c), Ariz. R. Crim. P.). The Court of Appeals agreed with the State's interpretation and reversed the dismissal order:

Our supreme court has rejected the argument that Rule 8.2(a) measures the period from the date of the initial arrest prior to the filing of a complaint, indictment or information. *See State v. Hall*, 129 Ariz. 589, 592, 633 P.2d 398, 401 (1981) (speedy trial rights upon "arrest" within meaning of Rule 8.2(a) attach "only upon indictment"). Our courts have consistently held that speedy trial rights do not attach under either our constitution or under the procedural rules enacted to implement the constitutional provisions until a prosecution is commenced or a defendant is held to answer.

State v. Lemming, 188 Ariz. 459, 461, 937 P.2d 381, 383 (App. 1997).

The 150-day period in former Rule 8.2(a) began not merely when an indictment was issued, but when the defendant was arrested or surrendered. In *State v. Acinelli*, 191 Ariz. 66, 952 P.2d 304 (App. 1997), the defendant erroneously asserted that the 150-day time limit began to run when the indictment was issued; the prosecutor and the trial court mistakenly accepted the defendant's premise and the trial court dismissed the case. The Court of Appeals disagreed, noting that Rule 8.2, Ariz. R. Crim. P., "plainly states that a defendant must be tried within 150 days of the arrest or service of summons:"

The defendant's right to a speedy trial "attaches when the defendant is held to answer" for the crime. *State v. Medina*, 190 Ariz. 418, 421, 949 P.2d 507, 511 (App.1997).

In this case, the 150-day period began to run on June 30, 1995, when the defendant surrendered. However, because he initially appeared and was released also on June 30, under Rule 8.2(c), the applicable time period

became 120 days from that date. This period had not yet run when the defendant filed his motion to dismiss on October 17, 1995.

State v. Acinelli, 191 Ariz. 66, 69, 952 P.2d 304, 307 (App. 1997).

In *Snyder v. Donato*, 211 Ariz. 117, 120, 118 P.3d 632, 635 (App. 2005), the court proposed a definition of “complex case,” which extends the time for trial under Rule 8.2(a)(3): “A case so complicated, by virtue of its nature or because of the evidence required, that the ordinary limits for the time to trial are insufficient and must be extended to afford more time to prepare so that the case can be fairly and fully presented.” *Accord*, *State v. Wassenaar*, 215 Ariz. 565, 570, 161 P.3d 608, 613 (App. 2007).